

Application Serial No. 10/091,160
Attorney Docket No. 67328

(2) REMARKS

Reconsideration and allowance of claims 1-10, all of the claims under consideration, are requested in view of the above amendments and the following remarks. No claims have been added or cancelled.

35 USC §112, first paragraph, Enablement

Claims 1-10 have been rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement because the claims call for "filler fat" and "coating fat" but are said to be without sufficient support for these terms. This rejection is respectfully traversed for the reasons stated in applicants last response as well as in view of the following remarks, which are supported by reference citation as called for by the examiner.

The terms "filler fat" and "coating fat" are defined in the application text in paragraph 47 in the following terms:

The term "filler fat" as used here is synonymous with "filling fat" and as used here has the meaning generally understood in the art—that is an oleaginous composition which is soft and spreadable at room temperature. A "coating fat" as used herein also has the meaning generally understood in the art—that is a hard, oleaginous material which at room temperature preferably breaks with a snap and which melts sharply at or about body temperature, thus contributing to a mouthfeel associated with cocoa butter.

It is clear to the person skilled in the art, even without these definitions, that filler fats must be soft and spreadable, while coating fats are intended to simulate the texture of chocolate.

While both the filler fats and the coating fats have significant solid fat contents – they must not flow at room temperature – the coating fat will require more solids and have a saturated fat content that actually hardens, ideally to snap like chocolate. The person skilled in the art will recognize that butter is commonly used in making frostings and fillers due to its soft, spreadable texture at room temperature. Chocolate has essentially no moisture and a fat having a composition similar to it must be included with a filler fat to achieve the objectives of the invention. In addition to the above-noted definitions, applicants' description also refers to United States Patent No.

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5,378,490 to Wheeler, *et al.*, which gives specific examples wherein fillers and coatings are described.

Applicants' citation to U. S. Patent No. 5,378,490, shows that the art is aware of the nature of filler fats and coating fats. It also shows specific examples of such. While the patent is primarily related to shortening-type fat compositions, it describes and exemplifies both filler fats and coating fats. Specifically, Example 45 describes sandwich cookies having a filler made from a blend of specific fats (the blend being the filler fat) of three prior examples and can have a coating made from a specific fat of another example. The filler fat components are those of Example 2 (diacetyl stearin- 160 parts), Example 14 (dipropionyl stearin- 24 parts) and Example 36 (dihexanyl stearin- 14 parts). The mixture will be significantly softer than the diacetyl stearin component, meeting the filling soft and smooth in texture and mouthfeel. The example describes the solid fat profile as containing solids contents as follows:

90% at 50°F

78% at 70°F

60% at 80°F

15% at 92°F

0% at 100°F.

The coating fat, on the other hand was all diacetyl stearin, which has a higher, sharper melt profile. While the specific solids profile for this fat is not given note the description in the paragraph bridging columns 19 and 20, which is typical for coating fats, which are intended to simulate the melt of chocolate. Thus, contrary to the examinee's statement that the cited patent does not "discuss or give examples of ingredients that can be used to satisfy the requirement of filler fat and coating fat" has not taken the above into account.

The examiner also indicates that applicants have "not submitted evidence to show that at the terms "filler fat" and "coating fat" readily [suggest] to one skilled in the art the fat to use. In direct response to this applicants submit herewith pages from a publication of the American Soybean Association, which describes and exemplifies the fats covered by the questioned terms. In particular, see pages 19, 20, 30, 31, 49 and 50. There can be no doubt that the person skilled in the

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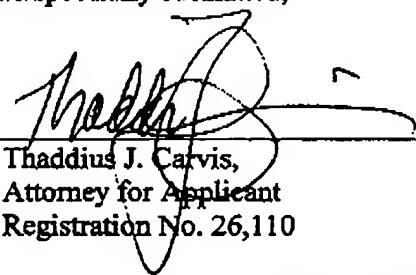
art knows the meaning of the terms "filler fat" and "coating fat". Also printed are pages (1, 25 and 26) from the ASA-Europe web site indicating that the pamphlet was available in 1997. Full copies of the reference and the web site are available as indicated in the documents.

Applicants submit that they have defined the questioned terms in the description in clear terminology and because those definitions are not repugnant to accepted definitions, there should be no §112 objection or rejection by the Patent Office.

Accordingly, reconsideration and withdrawal of this basis for rejection are believed in order.

Applicants have made a significant contribution to the art of food bars, and especially those that have a crisp texture and can be cold formed continuously. The claims set forth the invention clearly and concisely in terms which distinguish from the prior art. Accordingly, allowance of all claims is believed in order and such action is earnestly solicited.

Respectfully submitted,



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